

**Notice of Allowability****Application No.**

09/625,017

**Examiner**

John W Hayes

**Applicant(s)**

LEVINE, DAVID

**Art Unit**

3621

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Response filed 16 December 2004.
2. ☒ The allowed claim(s) is/are 1-15 and 20.
3. ☒ The drawings filed on 06 May 2003 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some\* c) ☐ None of the:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

John W Hayes  
Primary Examiner  
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***Allowable Subject Matter***

1. Claims 1-15 and 20 are allowed over the prior art of record.
2. The following is an examiner's statement of reasons for allowance:

The closest prior art of record is U.S. Patent No. 6,230,204 B1 to Fleming, III, U.S. Patent No. 5,410,598 to Shear and U.S. Patent No. 6,199,076 B1 to Logan et al.

Fleming discloses a method for estimating usage of computer resources and teach maintaining a registry of a plurality of users; providing materials including audio and visual contents and computer software to users by downloading via a distributed data-communications topology; maintaining a database of materials provided by the system to users of the plurality of users; using a substantially packet-based protocol over a distributed data communications topology, communicating with a user of the plurality of users; accepting a report of the users prior use of materials provided by the system, the report being a sample of the prior use by the plurality of users; and convoluting an updated metric of use into respective materials records in the database.

Shear discloses a database usage metering system and further teaches that one way in which to recover the costs of constructing and maintaining a database is to charge a flat subscription or access fee to each user subscribing to use the database. Shear also discloses that many database owners, instead, charge a nominal subscription fee, and then periodically charge users a fee calculated in accordance with the amount the user has used in the database (Col. 3, lines 25-30). Shear discloses that the user may be billed an annual fee for some materials and billed on a "pay as you go" basis for other materials (Col. 16, lines 40-55).

Logan et al disclose an audio distribution system in which program segments are transmitted to subscribers and wherein a usage log is compiled to record the subscriber's use of the provided materials. The usage log is uploaded by the subscriber and is used to bill the subscriber and provide royalties to the content providers.

As per Claims 1 and 20, the closest prior art of record taken either individually or in combination with other prior art of record fails to teach or suggest accepting a report of the user's prior use of materials, the report being a sample of the prior use by a plurality of users; statistically convoluting an updated metric of use into respective materials records in the database and computing a quantification of

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royalty owner rights, the quantification serving to divide the collective subscription fees of the plurality of users based on the updated metric; wherein the subscription fees are payed to the maintainer of the database unrelated to the usage of a specific material. Based upon this allowable feature and applicant's convincing arguments with respect to the unobvious combination of the references to Fleming and Shear, these claims are deemed allowable. Claims 2-15 depend upon claim 1 and have all the limitations of claim 1 and are allowable for the same reason.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Hayes whose telephone number is (703)306-5447. The examiner can normally be reached Monday through Friday from 5:30 to 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jim Trammell, can be reached on (703) 305-9768.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **(703) 305-3900**. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair> . Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Please address mail to be delivered by the United States Postal Service (USPS) as follows:

**Commissioner of Patents and Trademarks**


**Washington, D.C. 20231**

or faxed to:

**(703) 872-9306** [Official communications; including  
After Final communications labeled  
"Box AF"]

**(703) 746-5531** [Informal/Draft communications, labeled  
"PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington,  
VA, 7<sup>th</sup> floor receptionist.

  
John W. Hayes  
Primary Examiner  
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